practical difficulties in making proof of intent would seem to point to the liberal interpretation of the rule, leaving the defendant's rights to be safeguarded by careful instructions to the jury.

EVIDENCE—PROOF OF FOREIGN LAW.—P was adopted by O's intestate in 1903 in the then territory of New Mexico. The conditions and consequences of this adoption were in dispute. No evidence of the law of New Mexico was introduced by either party. *Held,* in absence of a showing to the contrary, the law of New Mexico in 1903 will be presumed to have been the same as the code provisions in effect in California at that time. *Corison v. Williams* (Cal., 1922), 208 Pac. 331.

The general rule is that courts will not take judicial notice of the laws of another state, and that such laws must be proved as facts. Practically all jurisdictions, however, will take judicial notice of the fact that another state has a fundamental system of law similar to its own (if such be the fact), and from this draw the presumption that the law of the foreign forum is the same as its own law, exclusive of statutory changes. *Cuba R. Co. v. Crosby,* 222 U. S. 473; *Lemieux v. Boston, etc., R. Co.,* 219 Mass. 399; *Murrin v. Archbald Consol. Coal Co.* (N. Y., 1921), 134 N. E. 563. About a dozen states have gone further and adopted the rule of the instant case, extending the presumption so as to include even statutory changes. In this form it is really no presumption at all, but a rule of procedure to the effect that where the law of a foreign state is relevant, but not shown, it will be presumed to coincide with the law of the forum in all particulars. In spite of the unjust burden which it may put upon a party who has not the burden of proof on the issue and yet is forced to prove the foreign law if he wishes to rely upon it, this rule has recommended itself to the courts because of its simplicity and clearness. It is probably felt that while the operation of the rule may possibly be harsh and unjust, this will actually occur but rarely. However, Iowa, which was early a follower of this rule, in a recent case expressed its disapproval of it, and though the court declined to overrule its precedents, it also refused to extend the rule so as to presume constitutional provisions in a sister state to be similar. *Droge El. Co. v. Brown Co.,* 172 Ia. 4 (noted in 29 HARV. L. REV. 106). A third rule is in force in a few jurisdictions. It is merely a combination of the first and second—*i. e.,* the court follows rule one when the foreign state has a fundamental system of law similar to its own, and follows rule two when it has a fundamental system different from its own. This rule lacks both the fairness of the first and the simplicity of the second. "Presumption of the Foreign Law," by Professor Kales, in 19 HARV. L. REV. 401-415, contains a comprehensive study of the theory and practice of the various rules on this subject. For citation to cases, see 67 L. R. A. 3, and 23 C. J. 134. It is, perhaps, not out of place to call attention in this connection to the statutory rule adopted in some states requiring (in Michigan by Comp. Laws 1915, § 12513, "permitting") the courts to take judicial notice of the law of a sister state. This rule seems to be in force in some form or

another in Arkansas (Kirby's Digest, § 7823), Connecticut (Rev. St. 1918, § 5725-6-7), Georgia (see *Seaboard, etc., Ry. v. Phillips,* 117 Ga. 98), Mississippi (Code 1906, § 1015), and West Virginia (Code 1906, § 280). Such a rule has obvious merits over any of the pseudo-presumption rules as applied between the various states of the Union. 20 COLUM. L. REV. 476.

INSURANCE—EFFECT OF AGREEMENT THAT EVIDENCE OTHERWISE ADMISSIBLE SHALL NOT BE CONSIDERED.—Plaintiff, as beneficiary under a benefit certificate issued her husband, sued defendant fraternal order, alleging the death of the insured and setting out that he had disappeared and for more than seven years had not been heard from. Defendant pleaded a by-law of the order, passed after the certificate was issued, that "the disappearance or long-continued absence of any member unheard of shall not be regarded as evidence of death * * *." *Held,* the by-law is void. *Holman v. Modern Woodmen of America* (Mo., 1922), 243 S. W. 250. In another case substantially the same, except that the benefit certificate itself contained the clause, this provision was also held to be void and against public policy. *McCormick v. Woodmen of the World* (Cal., 1922), 207 Pac. 943.

The Missouri court, in *Holman v. Modern Woodmen, supra,* simply followed the case of *Cobble v. Royal Neighbors of America* (Mo., 1921), 236 S. W. 306, in which it was decided such by-law was void as running counter to the rule of evidence, considered to be a rule of policy established by common law and declared there by statute. The power reserved by the association of making future by-laws binding upon existing members does not contemplate the passing of by-laws unreasonably affecting the substantial rights under the benefit certificate. VANCE ON INSURANCE, § 69; 83 Am. St. Rep. 706, note. Numerous cases are authority for the proposition that a by-law stipulating that the death of the insured shall not be shown by the use of the presumption of death arising from seven years' absence, may not be binding upon pre-existing members because unreasonable. *Bennett v. Modern Woodmen of America* (Cal. App., 1921), 199 Pac. 343; *Samberg v. Knights of Modern Maccabees,* 158 Mich. 568; *Hannon v. Grand Lodge, Ancient Order United Workmen of Kansas,* 99 Kan. 734; *Olson v. Modern Woodmen of America,* 182 Iowa 1018; *Weber v. Knights of Maccabees,* 172 N. Y. 490. In *Pierson v. Modern Woodmen,* 125 Minn. 150, it was held that the trial court properly excluded such a by-law, since it was not shown or claimed it existed when the member disappeared. But if an attempt by contract to restrict the application of a rule of evidence is against public policy and void, then provisions in the insurance contract that seven years' unexplained absence shall not be evidence of death are invalid without regard to whether such provision was passed after or before the insured became a member. Some authorities support the principal cases on this broad ground. *Gaffney v. Royal Neighbors of America,* 31 Idaho 549; *Supreme Ruling of Fraternal Mystic Circle v. Hoskins et al.* (Tex. Civ. App.), 171 S. W. 812; *National Union v. Sawyer,* 42 App. Cas. D. C., 475, 480. Disagreeing with the principal cases and those last cited are *McGovern v. Brotherhood of Locomotive Firemen and Engineers,* 31 Ohio